

Agreement of the Parties Regarding *Jones* Compliance

To resolve the *Jones* portion of this case, the parties enter into this agreement. So as to create a more effective process for delivery of required services to students and families and improve the timely implementation of HODs and SAs, the parties will take the following steps set forth below.

- A. This agreement is contingent upon the Court's approval. Subject to approval by the Court, this agreement will be binding upon the parties and shall be enforceable as any provision of the Consent Decree, except as otherwise provided in the conditions and terms set forth herein. Consent Decree, ¶ 113. This agreement is voidable in its entirety by either party in the event that the Court does not approve this agreement.
- B. This agreement is not severable without the written consent of the parties.
- C. Termination of the *Jones* portion of this case is governed solely by the provisions of Paragraph 148 of the Decree.

I. Adoption of the ADR Specialist's Report and Recommendations

(1). To ensure that students timely obtain the IEEs and independent compensatory education services required by HODs and SAs, Defendants shall be required to make the "diligent efforts" described below:

(a). The DCPS Resolution Team shall finalize a communication protocol with input from plaintiffs that gives case managers detailed practical guidance on when and how to (1) follow up with parents and attorneys on the status of IEEs and independent compensatory education and (2) assist parents and attorneys in securing IEEs and independent compensatory education. (See Exhibit A, "Draft Protocol for Communications with Parent/Guardian Regarding Assistance with IEEs/Services", "Parent Communication Protocol") If the parent or attorney is having difficulty obtaining the IEE, Defendants should offer to conduct the evaluation themselves, as required by the parties' 2006 Case Closure Protocols. 2010 Annual Report, Exhibit 1 at § II(B)(2).

(b). When the DCPS Resolution Team authorizes, or an HOD or SA requires, an IEE or compensatory services:

(i). Defendants shall provide the parent or representative with a list of providers who deliver quality IEEs and independent compensatory education services at a cost acceptable to DCPS, along with a brief description of the services that each provider can perform. The list provided by Defendants should include feasible options for the student, identifying providers in a variety of geographic locations who offer evening or weekend appointments as well as providers who offer bilingual services. Defendants should ensure the accuracy of the list by, *inter alia*, regularly gathering and considering information from parents' attorneys

concerning providers on the list and updating the list on at least a semi-annual basis. Defendants should make the list available via websites in order to ensure that parents have ready access to the list;

(ii). Defendants shall provide parents and their attorneys accurate and clearly written information about the procedures for payment and reimbursement of IEEs and independent compensatory education;¹

(iii). Defendants shall offer, both orally and in writing, to assist the parent with scheduling the IEE or independent compensatory education and with securing childcare or transportation that may be needed for the student and parent to participate in the IEE or independent compensatory education session. Defendants will bear the costs of such assistance, including any needed childcare or transportation. In cases where agreed upon due diligence efforts have not resulted in the delivery of independent compensatory education, Defendants may offer the parent additional independent compensatory education options pursuant to Exhibit B (“Agreement of the Parties Regarding Closure of Independent Compensatory Education Cases”, (**“Independent Comp Ed Closure Protocol”**)). Cf. 20 U.S.C. § 1401(26)(A) (defining “related services” under IDEA to include transportation); 34 C.F.R. § 300.502(a)(3)(ii) (IEEs to be provided at no expense to parent).

(c). When students are awaiting an IEE, DCPS shall offer to provide appropriate interim services. Any offer of interim services declined at the resolution session should be made again after the HOD is issued. Cf. 34 C.F.R. § 300.518(c) (requiring LEA to provide special education and related services that are not in dispute pending the resolution of due process proceedings).

(d). Defendants shall keep careful records, as outlined in OSSE’s HOD/SA Guidelines, attached as Exhibit C, for each student with an HOD or SA, of “diligent efforts” they have made pursuant to ¶ 7 of the Decree, including the substance of any offers of assistance or interim services to parents or attorneys and the substance of the response to such offers.

(2). In order to comply with ¶ 7 of the Decree, Defendants shall not award themselves a “timeliness extension” for implementation of an HOD or SA unless that extension accurately reflects the amount of time during which Defendants were both

(a) waiting for a “precursor” from the parent and

(b) making diligent efforts to obtain the precursor

¹ With respect to independent compensatory education, Defendants shall forward to the parent a clearly-written letter including, when applicable, (1) the duration and intensity of the services to be provided, (2) available service providers, (3) the rate Defendants are willing to pay for the service and (4) projected beginning and end dates for the services. The letter should include the name and contact information for the assigned compliance case manager.

(3). Defendants may not award themselves a “timeliness extension” unless:

- (a) the case manager has detailed in writing both the reason for the extension and the assistance offered to avoid the need for such an extension,
- (b) there is a contemporaneous record of the offers of assistance and efforts made by the case manager, and
- (c) the supervisory staff who decide whether to grant the extension review the case manager’s written justification and find that the justification is adequate and the extension requested is not longer than necessary based on the facts presented.

(4). As required by ¶¶ 7 and 52 of the Decree and the 2006 Case Closure Protocols, Defendants will report HODs and SAs as “overdue” when a deadline has passed unless: (1) Defendants are waiting for the parent to provide a necessary precursor to implementation, *and* (2) Defendants have made diligent efforts by, *inter alia*, complying with the recommendations in ¶ 1 (a)-(d) above. When Defendants are waiting for a precursor and have made diligent efforts, the case shall be reported as “outstanding” and not as “timely implemented.”

(5). For HODs/SAs containing IEE or independent compensatory education provisions where a) the parent no longer seeks the relief ordered or agreed to in the provision but seeks a new form of relief in exchange, and where the parent or parent’s attorney signs a statement to that effect, and b) the parent no longer seeks the relief ordered or agreed to in the provision and seeks nothing in exchange, and where the parent or parent’s attorney signs a statement to that effect, Defendants will submit the case documentation to the Court Monitor and class counsel for a determination of whether the original required action can be considered “timely implemented” even though the independent compensatory education was not received. The Court Monitor will make the decision as to whether the required action can be considered voided, taking into account input from class counsel. If the required action is voided, then the timeliness and implementation status of the remainder of the required actions will determine the case’s overall status.

(6). Defendants shall cease the following practices, which are inconsistent with the Decree and the 2006 Protocols:

- (a). Closing cases as “timely implemented” where parents did not obtain a needed IEE within 45 days, or where the IEE was never performed;

- (b). Closing cases as “timely implemented” where needed independent compensatory education services have not begun unless the due diligence steps outlined in Exhibit B, (**Independent Comp Ed Closure Protocol**), have been followed, including the further offer of independent compensatory education options and an independent review by the Court Monitor;

- (c). Closing cases as “timely implemented” through settlement agreements that extend the deadlines for implementing HOD provisions;

(d). Otherwise reporting administrative closures as “timely implemented” and not “outstanding” or “overdue.”

(7). OSSE shall retain a consultant by December 1, 2011, or such other date agreed to by the parties, to work with them to develop and implement a plan for conducting the annual data accuracy audits required by the Decree. The plan must be acceptable to the Court Monitor.

(8). Defendants shall take steps to ensure that persons attending resolution sessions on behalf of DCPS are appropriately familiar with the facts of each case, the applicable law and regulations and empowered to negotiate in a meaningful way.

(9). DCPS shall undertake a review of the Guidelines for reimbursing private attorneys and obtain input from the private bar in that review. The review should be completed by November 1, 2011 absent agreement between the parties here on another date.

II. Other Provisions to Ensure *Jones* Compliance

(10). Defendants shall implement the following practices to ensure that meetings required by HODs/SAs are timely:

(a). In cases where HODs/SAs require meetings to be held within 15 days after (i) the HOD or SA requiring the meeting, or (ii) a precursor event (i.e., completion of an independent educational evaluation (IEE)), LEA staff will send a request for three (3) meeting dates to parents or attorneys within two (2) business days of (i) or (ii) above.

If the parent or attorney does not respond to the request for dates within two (2) business days after the request was sent, the LEA will send a Letter of Invitation (LOI) to the parent. LOIs will generally propose two (2) dates and/or times before the deadline in the HOD/SA.

(b). In cases where HODs/SAs require meetings to be held 15 days or more after (i) the HOD or SA requiring the meeting, or (ii) a precursor event (i.e., completion of an independent educational evaluation (IEE)), LEA staff will send a request for three (3) meeting dates to parents or attorneys within three (3) business days of (i) or (ii) above.

If the parent or attorney does not respond to the request for dates within three (3) business days after the request was sent, LEA staff will send a Letter of Invitation (LOI) to the parent. LOIs will generally propose two (2) dates and/or times before the deadline in the HOD/SA.

(c). In cases in which defendants demonstrate compliance with (a) or (b) above, the provision requiring the meeting may be considered “timely implemented,” even if the parties agree to hold the meeting after the required deadline.

(d). LEA staff responsible for scheduling required meetings shall be trained to follow these practices.

(11). DCPS shall continue compensating parents' attorneys for work in securing and submitting IEEs and for securing independent compensatory education as required by and within the timelines required by HODs/SAs. Compensation for hours reasonably expended will be at the same billable rate the attorney receives for other case-related work for a prevailing parent under the Guidelines for reimbursing private attorneys, as reviewed.

(12). DCPS shall continue compensating providers of IEEs who are also the students' treating professionals for participation in meetings held pursuant to an HOD/SA at which the IEE is to be discussed. Compensation will initially be at \$90/hour; this rate will be periodically reviewed and adjusted to conform to the current DCPS rate schedule. This provision does not preclude any other agreements to compensate IEE providers for their participation at IEP meetings.

III. Additional Provisions

(13). Nothing in this agreement modifies the ADR process identified by the Consent Decree, or its provisions for the Court's review of any ADR findings or recommended relief.

(14). Defendants assert that they are subject to the federal and District Anti-Deficiency Acts, 31 U.S.C. § 1341 and D.C. Code §§ 1-206.03(e), 47-105, 47.335.01, and § 446 of the Home Rule Act, D.C. Code § 1-204.46. Plaintiffs assert that these Anti-Deficiency Acts do not relieve defendants of their obligations to comply with this agreement. Because there is no actual dispute at this time concerning the availability of funds, the parties preserve their respective positions for future resolution by the ADR Specialist or the Court, if necessary.

(15). During the period of this agreement the parties will invite members of the plaintiffs' bar and special education leadership in DCPS, OSSE, and the Public Charter School Board to a minimum of two meetings annually to review progress in implementing the provisions of this agreement.

(16). The parties will ask a mutually agreed upon party to convene one or more meetings after the reopening of schools for the 2011-2012 school year for parents of students who have filed due process complaints within the past two years to meet with special education leadership in DCPS, OSSE, and the Public Charter School Board to review progress in implementing the provisions of this agreement and other concerns they may have about special education in the District of Columbia.

(17). As to all matters implemented as a result of this Agreement, Defendants are to issue quarterly reports to the Monitor and class counsel outlining all steps taken and results achieved. All rights of Plaintiffs to access information in the possession of Defendants as set forth in the Decree remain in place.

AGREED TO:

Ellen Efros
For Defendants

DATE: _____

Ira A. Burnim
For Plaintiffs

DATE: _____